

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF TAG MOBILE, LLC FOR)	
DESIGNATION AS AN ELIGIBLE)	CASE NO.
TELECOMMUNICATIONS CARRIER IN THE)	2011-00312
STATE OF KENTUCKY FOR THE LIMITED)	
PURPOSE OF OFFERING WIRELESS)	
LIFELINE AND LINK-UP SERVICE TO)	
QUALIFIED HOUSEHOLDS (LOW INCOME)	
ONLY))	

O R D E R

On August 23, 2011, TAG Mobile, LLC (“TAG Mobile”), a Commercial Mobile Radio Service (“CMRS”) resale provider, filed a petition under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (“ETC”) to receive federal universal service support in Kentucky.¹ TAG Mobile provides service using Sprint and Verizon Wireless as its underlying carriers.² TAG Mobile seeks ETC designation only for the purposes of participation in the Lifeline and Link-Up Programs. TAG Mobile does not seek high-cost support.³

The petition states that: (1) TAG Mobile meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;⁴ (2) TAG Mobile requests designation throughout each of the designated areas within its service

¹ TAG requests ETC designation throughout its entire service area. Petition at 1.

² Id. at 12.

³ Id. at footnote 1.

⁴ Id. at 5 - 12.

coverage;⁵ (3) in accordance with 47 U.S.C. § 214(e)(2), TAG Mobile seeks to be designated as an ETC in rural and non-rural wirecenters;⁶ and (4) designation of TAG Mobile as an ETC for the designated areas served in Kentucky will serve the public interest.⁷

TAG Mobile's Lifeline service offering will provide customers with the same features and functionalities enjoyed by all other TAG Mobile prepaid customers. TAG Mobile's Lifeline service customers will receive a free handset and a minimum of 68 anytime prepaid minutes per month at no charge. Customers may use their minutes to place domestic long distance calls at no additional charge. In addition to voice services, prepaid Lifeline customers also will have access to a variety of other standard features at no additional charge, including voice mail, 3-way calling, call forwarding, caller I.D. and call waiting services. TAG Mobile does decrement minutes for incoming text messages or calls placed to TAG Mobile's customer service and Directory Assistance, but does not charge for calls to 911 emergency services.⁸ TAG Mobile's customers will be able to send and receive text messages at a rate of one minute per every three text messages.⁹ Unused minutes do not roll over month to month. If the customer uses his or her minutes and decides to purchase additional minutes, purchased minutes are

⁵ Id. at 17-18.

⁶ Id. at 17.

⁷ Id. at 20 - 23.

⁸ Exhibit B to Petition at 2.

⁹ Id. at 3.

available for seven or 30 days from the date of purchase, depending on the plan purchased.¹⁰

TAG Mobile will allow customers to sign up for wireless service through three methods. The first is by calling into customer service and providing information to have an activated handset mailed to their residence. The second is via its website, where the customer can provide the necessary information and an activated handset is mailed to their residence. The third is through authorized agent locations where the customer can complete the application with the assistance of the agent, if needed, and upon approval, receive an activated phone for immediate use.¹¹ Through any method, the customer will be required to self-certify at the time of activation and annually thereafter, that they meet the eligibility requirements to participate in the program.¹²

TAG Mobile has stated in its petition that it will submit to the Commission the Kentucky USF fee and Kentucky Telecommunications Relay Service and Telecommunications Access Program fee for each customer, although not billed directly to the customers because the customers do not receive bills.¹³ TAG Mobile also states that it will remit the statewide wireless 911 fee to the Commercial Mobile Radio Services Board.¹⁴

¹⁰ Id.

¹¹ Petition at 18.

¹² Id. at 29.

¹³ Id. at 27.

¹⁴ Id. at 10.

TAG Mobile also stated in its petition that it will not be providing a toll limitation feature since TAG Mobile does not differentiate domestic long distance telephone toll usage from local usage, and all usage is paid for in advance.¹⁵

No party has requested a hearing in this matter and the Commission finds that this matter is now ripe for a decision.

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), "only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific federal universal service support." Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.

Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

As outlined in 47 C.F.R. § 54.201(d), an ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c); (2) a certification that the

¹⁵ Id. at 12.

petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”; (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefore [sic] using media of general distribution”; and (4) if the petitioner meets the definition of a “rural telephone company” pursuant to 47 U.S.C. § 153(37), the petitioner must identify its study area; or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

TAG Mobile has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. TAG Mobile certifies that it now provides, or will provide throughout its designated service area, the services and functionalities enumerated in 47 C.F.R. § 54.101(a). TAG Mobile has also certified that, in compliance with 47 C.F.R § 54.405, it will make available and advertise Lifeline and Link-Up service to qualifying low-income consumers.

OFFERING THE SUPPORTED SERVICES USING A CARRIER’S OWN FACILITIES

Consistent with the requirements of the 1996 Act, 47 U.S.C. § 214(e)(6) and § 54.101 through 54.207 of the Federal Communication Commission (“FCC”) Rules, TAG Mobile, in its provision of wireless services, will rely on a combination of resold wireless services and Company-owned facilities, thus allowing TAG Mobile to meet the FCC’s test that requires an ETC to provide services, at least in part, through a “combination of its own facilities and resale of another carrier’s services.” TAG Mobile owns or co-owns with its affiliate, dPi Teleconnect, LLC (“dPi”) a variety of facilities.

TAG Mobile has a co-owned Cisco switch located in Los Angeles, California, and a network call controller located in Dallas, Texas. TAG Mobile owns additional computer databases and calling platforms in Pensacola, Florida. TAG Mobile's network operation center is located in Dallas, Texas and it is online with TAG Mobile's remote Cisco call control/authorization array and its Cantata Excel network switch, located in Los Angeles, California. Operator Services, Directory Assistance Services, and international terminated calling traffic passes through the Cantata network switch.

TAG Mobile obtains wholesale services of CMRS providers. Through these arrangements, TAG Mobile is able to offer all of the services and functionalities supported by the universal service program, as detailed in Section 54.101 (a) of the FCC Rules, throughout its service area.

As discussed previously in this Order, 47 C.F.R. § 54.201(d) defines the requirements that a carrier must fulfill in order to be granted ETC status. Under section (d), the carrier must provide the supported services by "either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier)." The next section, 47 C.F.R. § 54.201(e), defines the term "facilities" to mean "any physical components of the telecommunications network that are used in the transmission or routing of the service that are designated for support pursuant to subpart B of this part." 47 C.F.R. § 54.201(f) provides that "the term 'own facilities' includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term 'facilities' under this subpart."¹⁶ The

¹⁶ See, e.g., 47 C.F.R. §§ 51.307–51.318, which outline the requirements for carrier access to and use of unbundled network elements.

Commission finds that TAG Mobile has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.

Local Usage

Local Usage means: "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users."¹⁷ With respect to wireless service, the FCC and this Commission have not quantified an amount of local usage that is required to be included by an ETC as a part of its universal service offering.

TAG Mobile proposes to provide qualifying customers with 68 minutes of local and domestic long distance usage. In addition, TAG Mobile shall allow customers to purchase additional amounts of minutes for use, in varying quantities, if needed.

The Commission finds that the proposed usage plans are inadequate and do not meet the requirements of comparable usage. The Commission finds that TAG Mobile shall offer a minimum of 200 minutes local and domestic long distance usage to qualifying Lifeline customers, thereby fulfilling the requirements of 47 C.F.R. § 54.101(2) and 54.202(a)(4). In addition, TAG Mobile shall allow customers who desire additional minutes of use to purchase at a rate of no greater than ten cents per minute.

ADVERTISING SUPPORTED SERVICES

TAG Mobile has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(b) to advertise the availability of the supported services and the charges therefor using media of general distribution. In its petition, TAG Mobile states that it will publicize the availability of Lifeline and Link-Up in a manner reasonably designed to

¹⁷ 47 C.F.R. § 54.101(a)(1).

reach those likely to qualify for those services, as required by 47 C.F.R. §§ 54.405(b) and 54.411(d). TAG Mobile shall also advertise each of the supported services on a regular basis in newspapers, magazines, television, and radio, in accordance with 47 C.F.R. § 54.201(d)(2).

RURAL AND NON-RURAL STUDY AREAS

The FCC has previously found designation of additional ETCs in areas served by non-rural telephone companies to be in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of 47 U.S.C. § 214(e)(1).¹⁸

Rural Study Areas

In considering whether designation of TAG Mobile as an ETC in areas served by rural telephone companies will serve the public interest, the Commission must consider whether the benefits of an additional ETC in such study areas outweigh any potential harm. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, the Commission must weigh the benefits of increased competitive choice, the impact of the designation on the Universal Service Fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.

¹⁸ See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

The Commission finds that TAG Mobile's universal service offering will provide a variety of benefits to customers. For instance, TAG Mobile will offer a larger local calling area (as compared to traditional wireline carriers); the convenience and security afforded by mobile telephone service; the opportunity for customers to control cost by receiving a preset amount of flat-rated monthly airtime; the ability to purchase additional usage in the event that included usage has been exhausted; the ability of users to use the supported service to send and receive "SMS" or text messages, as well as the option to send data and access the public Internet; and 9-1-1 and, where available, E9-1-1 service in accordance with current FCC requirements. In addition, the inclusion of domestic telephone toll calling as a part of TAG Mobile's flat-rated wireless offering allows consumers to avoid the risks of becoming burdened with significant and unexpected per-minute charges for domestic telephone toll and overage charges.¹⁹

Public Interest Analysis

In determining whether the public interest is served, the burden of proof is upon the ETC applicant.²⁰ TAG Mobile asserts that granting ETC designation to TAG Mobile will provide consumers the benefits of value for their money, access to emergency services on wireless devices, and reliable means of contact for prospective employers, social service agencies or dependents. TAG Mobile also asserts that providing Lifeline service to those most in danger of losing wireless service promotes the public interest. TAG Mobile has satisfied the burden of proof in establishing that its universal service offering in this area will provide benefits to rural consumers.

¹⁹ Petition at 21.

²⁰ See Highland Cellular Order 19 FCC Rcd at 6431, para. 20; Virginia Cellular Order, 19 FCC Rcd at 1574-75, para. 26.

Designated Service Areas

The Commission finds that TAG Mobile should be certified as an ETC in the requested service areas served by rural and non-rural telephone companies that correspond to the wireless licenses of Sprint and Verizon Wireless. For purposes of federal universal service obligations, a rural telephone company's study area is presumed to be its service area unless and until the FCC and state commission cooperatively establish a different service area definition for such company after considering the Federal-State Joint Board on Universal Service's ("Joint Board") service area recommendations.²¹ Therefore, if a state commission proposes to define a rural telephone company study area as something less than the company's entire service area, the state commission must consider and make findings with respect to each of the three Joint Board factors.

However, because TAG Mobile is only requesting low income support, the Commission finds that the study areas of the affected rural telephone companies do not have to be redefined to match the licensed service area of the applicant.

ANNUAL CERTIFICATION AND VERIFICATION

Each year TAG Mobile will require each Lifeline subscriber to recertify their head of household status, certify that only one Lifeline discount is received at that household, and document their continued program eligibility for Lifeline in accordance with the annual Lifeline Certification and Verification for Universal Service Administrative Company that is due annually at the end of August and in accordance with Kentucky

²¹ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

Public Service Commission Administrative Case No. 360.²² The Commission finds that TAG Mobile's plan to meet the annual certification and verification requirements is in accordance with the Commission's requirements.

In an effort to prevent waste, fraud, and abuse of the program, TAG Mobile shall implement the following non-usage policy: If the customer does not use their service for a period of 60 days, the company will call, text, and follow up with a letter to the customer to ensure the customer would still like to keep the service. If the customer does not respond and still shows no usage, the company will suspend the customer's service and will not claim funds on this customer. While suspended, the customer will still have access to 911 services.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. TAG Mobile is designated as an ETC for the purpose of offering Lifeline and Link-Up service only in the exchanges of the non-rural and rural telephone companies that correspond to the wireless licenses of Sprint and Verizon Wireless.

2. During the current certification period, TAG Mobile shall be eligible to receive Kentucky Universal Service Fund for Lifeline and Federal Universal Service Fund Support for Lifeline and Link-Up.

3. TAG Mobile shall offer low-income universal support services to consumers in its service area.

²² Administrative Case No. 360, An Inquiry Into Universal Service and Funding Issues (Ky. PSC May 24, 2007).

4. TAG Mobile shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another ETC.

5. Pursuant to 47 C.F.R. § 54.201(i), TAG Mobile shall be precluded from offering universal service support exclusively through the resale of another carrier's services.

6. TAG Mobile shall offer a minimum of 200 minutes local and domestic long distance usage at no cost to qualifying Lifeline customers and shall allow customers who desire additional minutes of use to purchase at a rate of no greater than ten cents per minute.

7. TAG Mobile shall advertise the availability of and charges for these services using media of general distribution.

8. TAG Mobile shall comply with the Commission's annual certification process for Lifeline customers in accordance with the requirements of Administrative Case No. 360.

9. TAG Mobile shall implement the non-usage policy as described herein.

10. A copy of this Order shall be served upon the FCC and the Universal Service Administrative Company.

By the Commission

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KENTUCKY PUBLIC
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ATTEST:



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